

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EVGUENI POJILENKO	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
	:	
GOSHOW, POLICE OFFICER #7024	:	
OF THE PHILADELPHIA POLICE	:	
DEPARTMENT AS AN INDIVIDUAL	:	
AND IN OFFICIAL AND PERSONAL	:	
CAPACITIES,	:	NO. 02-8401
Defendant.	:	

MEMORANDUM AND ORDER

Schiiller, J.

March , 2003

Plaintiff Evgueni Pojilenko commenced this civil rights action under 42 U.S.C. § 1983 on November 8, 2002. In his Complaint, Mr. Pojilenko alleges that on July 12, 2000 he was a passenger in a vehicle that was traveling in Philadelphia, Pennsylvania. (Compl. ¶ 5.) Plaintiff further alleges that Officer Goshow of the Philadelphia Police Department stopped the vehicle, gave a false reason for pulling over the vehicle, handcuffed Plaintiff, and placed him in the backseat of her vehicle. (*Id.* ¶¶ 5(b), 12.) According to Plaintiff's Complaint, after Plaintiff had been placed in the police car, Officer Goshow found contraband in the vehicle in which he had been a passenger. (*Id.* ¶ 5(b).) Plaintiff avers that he spent one and one half days in jail (*Id.* ¶ 10), and later appeared in court. (*Id.* ¶¶ 6-7.) As he further alleges, Plaintiff successfully moved for the suppression of the contraband as evidence, and the case against him was dismissed on December 6, 2000. (*Id.* ¶ 5(c)). Plaintiff specifically states that his claims against Officer Goshow are for false arrest and false imprisonment. (Compl. ¶¶ 11-12.)

Defendant Goshow has moved to dismiss Plaintiff's Complaint, arguing that Plaintiff's claims are barred by the applicable statute of limitations. Although a statute of limitations defense

ordinarily cannot be raised in the context of a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, an exception is made where the complaint facially shows noncompliance with the limitations period. *See Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1385 n.1 (3d Cir. 1994). In cases brought by pro se plaintiffs, courts should dismiss the complaint for failure to state a claim only if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle him to relief. *See Leamer v. Fauver*, 288 F.3d 532, 547 (3d Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97(1976)).

“The Reconstruction Civil Rights Acts do not contain a specific statute of limitations governing § 1983 actions. . . .” *Wilson v. Garcia*, 471 U.S. 261, 266 (1985). The Supreme Court has held, however, that for purposes of determining which statute of limitations to apply, § 1983 claims are analogous to personal injury actions, and courts should apply the state law statute of limitations governing such actions. *See id.* at 280. Accordingly, in Pennsylvania, § 1983 claims are governed by the two-year statute of limitation period for personal injuries set forth in 42 PA. CONS. STAT. § 5524. *See Sameric Corp. v. City of Philadelphia*, 142 F.3d 582, 599 (3d Cir. 1998). Furthermore, § 1983 claims for false arrest and false imprisonment accrue on the date of the arrest. *See Montgomery v. De Simone*, 159 F.3d 120, 122 (3d Cir. 1998) (holding that plaintiff’s “false arrest and false imprisonment claims accrued on the night of her arrest”). Here, Plaintiff’s Complaint, which states that his arrest occurred in July 2000, was not filed until November 2002. Thus, on its face Mr. Pojilenko’s pleading shows noncompliance with the limitations period for false arrest and false imprisonment claims under § 1983, requiring those claims to be dismissed.

In her motion to dismiss, Defendant also indicates that if Plaintiff raised a claim for malicious prosecution in his Complaint, which Defendant does not concede, that claim would not be barred

by the statute of limitations. Because malicious prosecution claims do not accrue until the prosecution has been resolved in a plaintiff's favor, and Mr. Pojilenko states that the criminal case against him was dismissed in December 2002, such a claim could not be dismissed as time-barred. *See Heck v. Humphrey*, 512 U.S. 477, 489 (1994) (stating that "a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor.")

I am mindful that because Mr. Pojilenko is pursuing his action pro se, I have an obligation to construe his pleadings liberally. *See Holley v. Dep't of Veteran Affairs*, 165 F.3d 244, 247 (3d Cir. 1999). Nonetheless, in this case, Plaintiff's Complaint does not mention malicious prosecution, and, in fact, Mr. Pojilenko's Complaint reveals that he is specifically pursuing claims for false arrest and false imprisonment. Had Mr. Pojilenko indicated in a response to Defendant's motion to dismiss that his Complaint included a claim for malicious prosecution, it might be appropriate to deem his Complaint as stating such a claim. Plaintiff, however, failed to file a response to the motion to dismiss.

Accordingly, I will dismiss Plaintiff's Complaint in its entirety. An appropriate Order follows.

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ORDER

AND NOW, this day **March, 2003**, upon consideration of Defendant Officer Goshow's Motion to Dismiss, and no response having been filed thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant's Motion to Dismiss (Document No. 5) is **GRANTED**. Plaintiff Evgueni Pojilenko's Complaint is **DISMISSED**.
2. The Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

Berle M. Schiller, J.